



September 10, 1999

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR99-2513

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128443.

The City of Mesquite received a request for "all police calls and reports for the past 2 years for" a specified address, and "any police calls and reports" containing names of specific individuals. You seek to withhold the requested information under sections 552.101, 552.103 and 552.108 of the Government Code.

Section 552.101 requires withholding information made confidential by statutory constitutional law or by judicial decision. You argue that in order to respond to the portion of the request seeking police calls and reports containing the names of specified individuals, the city would have to compile information in a manner implicating the privacy rights of such individuals.

In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the United States Supreme Court concluded that where an individual's criminal history is compiled or summarized by a governmental entity, the information takes on a character that implicates an individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Based on *Reporters Committee*, this office has concluded that a request for all law enforcement records of a specified individual

implicates the individual's common-law privacy rights, and the responsive information is excepted from disclosure under section 552.101.

Although none of the information you submitted as responsive to the request appears to contain the names of the specified individuals, we agree that the city must withhold under *Reporters Committee* any criminal history information pertaining to these individuals which would be responsive to the request. Please note, however, that the common-law privacy protection recognized by *Reporters Committee* applies only to criminal history, *i.e.* information in which the named individuals are treated as suspects in the commission of a crime. *Id.* Where the individuals are named only as complainants, informants, victims, etc., the information is not protected under *Reporters Committee*.

You also contend that some of the requested information may be confidential under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

While we agree that records responsive to the request which identify juvenile suspects and pertain to conduct after September 1, 1997¹, would be protected by section 58.007, none of the submitted information appears to pertain to conduct by named juveniles. Therefore, none of the submitted information may be withheld under section 58.007.

You also raise the "informer's privilege" aspect of section 552.101. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The "informer's privilege" generally protects the identity of persons who report violations of the law. Open Records Decision Nos. 515 (1988), 191 (1978). However, the informer's privilege does not apply to "complainants," whose identities are specifically made public under *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

¹Section 58.007 applies only to juvenile conduct occurring after September 1, 1997. *See* Acts 1997, 75th leg., ch. 1086, § 53. Records of juvenile conduct occurring from January 1, 1996 to September 1, 1997 have no equivalent protection. *See* Open Records Decision No. 644 (1996).

(Tex. 1976). *See also* Open Records Decision No. 127 (1976). The individuals named in the submitted information appear to be, and are styled therein, as “complainants.” Their identities are not protected by the informer’s privilege.

You also cite Section 772.318 of the Health and Safety Code, which makes caller telephone numbers and addresses furnished by computerized 9-1-1 service suppliers or business service users confidential. *See* Open Records Decision No. 649 (1996). To the extent that the telephone numbers and addresses in the information at issue here were furnished by a service supplier or business service user under Health and Safety Code chapter 772, subchapter D, of which section 772.318 is a part, we agree that such telephone numbers and addresses are confidential and must be withheld.² However, we understand you to indicate that the telephone numbers and addresses contained in the submitted information here were not furnished by a service supplier or business service user. To that extent, the telephone numbers and addresses are not protected by the referenced Health and Safety Code provisions.

You also claim that the information at issue may be withheld under section 552.103. Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

²Open Records Decision No. 649 (1996) notes that of subchapters B, C, D, and E of chapter 772, “Local Administration of Emergency Communications,” subchapters B,C, and D contain identical confidentiality provisions. *See* Health and Safety Code §§ 772.118, 772.218, and 772.318. Subchapter E, however -- “Emergency Communication Service: Counties with Population over 1.5 Million” -- contains no such confidentiality provision.

Here, you advise only that the requested information relates to “potential litigation of a criminal nature.” In our opinion, you have not established that litigation in any particular matter is realistically contemplated. Therefore, none of the information at issue may be withheld under section 552.103.

You also claim that the requested information may be withheld under section 552.108. Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You suggest that release of the requested information “would very likely result in the interference of law enforcement, in general” [sic] and that the city, “with its very limited resources and manpower, would be affected in its ability to detect, investigate and prosecute crimes if it had to respond to every request by every person wanting copies of every law enforcement record in the city’s possession.” We do not believe that the legislature, in making “interference” with law enforcement a criterion for withholding requested information under section 552.108, intended that the inconvenience to a governmental body of dealing with a request would, in itself, constitute such interference. In our opinion, you have not shown that any of the requested information may be withheld under section 552.108.

We do note, however, that some of the information you submitted contains information which must be withheld under section 552.130, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

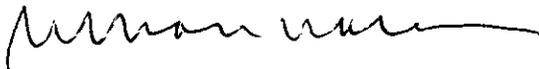
The records at issue contain drivers license and other information that are made confidential under section 552.130. We have marked the kinds of information that you must withhold under this section.

The submitted information also contains social security numbers. This office concluded in Open Records Decision No. 622 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. Prior to releasing the social security numbers, the city should ensure that the numbers were not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Except for information protected by section 552.130, as discussed above, and any social security numbers obtained by the city pursuant to a provision of law enacted on or after October 1, 1990, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 128443

Encl. Marked documents

cc: Mr. Jim Water
920 Via Del Rey
Mesquite, Texas 75150
(w/o enclosures)